IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2028 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NAGINBHAI HIRABHAI PATEL

Versus

DECD MODI RAMANLAL BAPULAL BY HIS HEIR & LR. MANIBEN R. MODI

Appearance:

MR AJ PATEL for Petitioner

MR. N.K. MAJMUDAR FOR MR PB MAJMUDAR for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: /08/1999

C.A.V. JUDGEMENT

This is tenant's revision under Section 29(2) of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 challenging the decree for possession granted by the lower appellate court.

2. The brief facts giving rise to this revision can be narrated as under:-

One shop in the disputed property in the ownership of the respondent was let out to the revisionist on monthly rent of Rs. 51/- for doing business. According to the landlord the tenant paid rent upto 30.6.1974 and did not pay the rent from 1.7.1974. He also failed to pay electricity charges at the rate of Rs. 2/- per month from 1.8.1974 and education cess from 1.10.1974. Notice dated 9.6.1976 was served on the tenant revisionist on 10.6.1976. It was alleged by the landlord that the notice remained uncomplied with and no rent was paid within a month of service of notice. Accordingly, suit for eviction was filed on two grounds. Firstly on the ground of tenant being in arrears of rent for more than six months and secondly that the room was required reasonably and bona fide by the landlord for his personal use.

3. The suit was resisted by the revisionist on the ground that the room was not reasonably and bona fide required by the landlord and that because the landlord was pressing enhancement of rent to Rs. 100/- per month which was not agreed upon by the revisionist, hence this ground was cooked up. Regarding arrears of rent it was pleaded by the revisionist that the rent was offered at the rate of Rs. 51/- per month but it was refused. Thereafter rent was also sent by money order which was also refused. According to the revisionist, the agreed rate of Rs. 51/- per month was excessive and for fixation of standard rent he moved an application which was registered as Civil Miscellaneous Application No. 368 of 1976. In that he claimed that the standard rent could not be more than Rs.20/- per month.

4. The Trial Court found that the standard rent was Rs. 51/- per month. The Trial Court did not hold that the tenant was liable to pay electricity charges and education cess. The Trial Court however found that the requirement of the landlord was reasonable and bona fide and that the tenant was irregular in making deposit of the rent during pendency of the suit. Consequently, the suit for eviction was decreed.

5. The revisionist filed appeal. The appellate court found that the reasonable and bona fide requirement of the landlord was not established. It however found that the standard rent should have been fixed at Rs. 45/per month and it was so fixed by the appellate court. On the point of arrears of rent the appellate court found that it was a case covered by Section 12(3)(b) of the Rent Act and since the tenant did not make deposit of rent regularly in the Trial Court as well as in the

appellate court he was not entitled to statutory protection under Section 12(3)(b) of the Rent Act. With this finding the appeal of the revisionist against decree for eviction was dismissed, though modified direction for payment of rent etc. at the rate of Rs. 45/- per month was given by the appellate court. Feeling aggrieved this revision has been filed by the tenant revisionist.

6. After hearing learned counsel for the parties and examining the record, it can be said that since the finding of the lower appellate court is that reasonable and bona fide requirement of the landlord is not established the suit for eviction on this ground could not be decreed. The finding of the trial court on this point has been reversed by the appellate court and this finding of the appellate court was not challenged before me. Consequently the finding of the lower appellate court on this point requires no interference and it can be held that the suit for eviction on the ground contained in Section 13(1)(g) of the Act cannot be decreed.

7. The learned counsel for the revisionist contended that on grounds of arrears of rent the landlord sought decree for eviction under Section 12(3)(a) of the Act and since the provisions of Section 12(3)(a) of the Act are not applicable the decree for eviction could not be granted under Section 12(3)(b) of the Act. In support of this contention he has placed reliance upon Narbheram Ambalal Vs. J.D. Kharva 1998(2) GLH 550. In this case placing reliance of the apex court's verdict in N.M. Engineer Vs. Narendra Virdi, AIR 1995 SC 448 it was held by this court in this case (decided by me) that if the landlord wants to evict the tenant and the tenant is in arrears of rent for less than six months he can come under Section 12(3)(b) of the Act and if it is so and the suit is instituted under this section then the tenant can save his eviction by paying rent or tendering the same in court on the first day of hearing and further that the tenant continues to pay or tender in court such rent till the suit is finally decided and also pays cost of the Suit. It was further held following the apex court's verdict in N.M. Engineer's case (supra) that the landlord having failed in his case under Section 12(3)(a) cannot switch over to rely on Section 12(3)(b) for seeking decree for eviction. In effect the verdict of the apex court in N.M. Engineer's case (supra) is that if a suit has been filed by the landlord for eviction of the tenant under Section 12(3)(a) and if it is found that the provisions of Section 12(3)(a) are not applicable, then the landlord cannot switch over to Section 12(3)(b)

of the Act in seeking eviction of the tenant.

8. In reply to this, Shri N.K. Majmudar for the landlord contended that the decree was not sought under Section 12(3)(a) of the Act but it was in effect, a decree claimed under Section 12(3)(b) of the Act inasmuch as education cess was also demanded from the tenant and since education cess is not payable monthly, the case does not fall under Section 12(3)(a) of the Act and as such it will be deemed that the decree was sought under Section 12(3)(b) of the Act. This contention does not stand scrutiny. Mere claim of education cess will not take out the case from the clutches of Section 12(3)(a) of the Act. No doubt, the landlord claimed education cess in addition to rent but neither the Trial Court nor the appellate court held that the tenant was obliged to pay education cess. Likewise both the courts below did not accept the landlord's version that electricity charges at the rate of Rs. 2/- per month were payable by the tenant in addition to rent. The decree passed by the Trial Court as well as by the appellate court does not issue any direction to the tenant to pay education cess over and above the standard rent. The standard rent according to the Trial Court, was Rs. 51/- per month whereas according to the appellate court it was Rs. 45/per month. In this view of the matter, provisions of Section 12(3)(a) of the Act were not attracted and since the landlord claimed decree for eviction under this section it was liable to be refused. Mere mention of education cess in the relief sought in the suit will not take out the case out of purview of Section 12(3)(a) of the Act. If the education cess was not held, by two courts below, to be payable by the tenant, then it will be deemed that the decree was sought under Section 12(3)(a) of the Act. Consequently such decree could not be simultaneously sought under Section 12(3)(b) of the Act. Moreover, there was dispute regarding standard rent also. Hence also the suit for eviction under Section 12(3)(a) could not be decreed.

9. Even if for the sake of argument it is presumed that Section 12(3)(b) of the Act is attracted it has to be seen whether the tenant revisionist was actually irregular in making the deposit of rent in court. The appellate court has given various dates on which the deposits were made by the revisionist in court and has come to the conclusion that the tenant was irregular in making the deposits in court and as such he was not entitled to protection under Section 12(3)(b) of the Act. Reliance was placed on the case of Maranalini B. Shah

Vs. Bapallal Mohanlal Shah, 19 GLR 1090. There can be no dispute about the proposition of law laid down by the apex court in this case. The apex court made the following observation in this case:-

> "The above enunciation clarifies beyond doubt that the provisions of clause (b) of Section 12(3) are mandatory, and must be strictly complied with by the tenant during the pendency of the suit or appeal if the landlord's claim for eviction on the ground of default in payment of rent is to be defeated. The word `regularly' in clause (b) of Section 12(3) has a significance of its own. It enjoins a payment of tenant characterised by reasonable punctuality, that is to pay one made at regular times or intervals. The regularity contemplated may not be a punctuality, of clock like precision and exactitude, but it must reasonably conform with substantial proximity to the sequence of time or intervals at which the rent falls due. Thus, where the rent is payable by the month, the tenant must, if he wants to avail of the benefit of the latter part of clause (b), tender or pay it every month as it falls due, or at his discretion in advance. If he persistently defaults during the pendency of the suit or appeal in paying the rent, such as where he pays it at irregular intervals or 2 or 3 or 4 months as is the case before us the court has no discretion to treat what were manifestly irregular payments as substantial compliance with mandate of this clause irrespective the fact that by the time the judgement was pronounced all the arrears had been cleared by the tenant."

10. In my view, the apex court's verdict in this case was not applicable to the facts of the case before me and the lower appellate court was certainly in error in observing that the tenant did not make full deposit as required under Section 12(3)(b) of the Act. The appellate court has simply mentioned the dates of deposit but has failed to take into consideration the amount deposited on those dates. A chart was shown to me by Shri A.J. Patel, learned counsel for the revisionist and from that chart it was revealed that the rent was deposited on various dates much in advance and the irregularity of deposit held by the lower appellate court is thus contrary to the evidence on record. It may however be mentioned that the rent was due from 1.7.1974. Notice was sent to the revisionist 9.6.1976 which was

served on the tenant revisionist on 10.6.1976. The tenant within a month of receipt of this notice moved an application for fixation of interim rent as well as for fixation of standard rent vide Civil Miscellaneous Application No. 368 of 1976 on 9.9.1977. The Trial Court fixed the interim standard rent at Rs. 51/- per month and standard rent was finally fixed by the Trial Court in its judgement rendered on 13.7.1979 at the same rate of Rs. 51/- per month. It may however be mentioned that the appellate court in its judgement rendered on 24.12.1981 fixed the standard rent at the rate of Rs. 45/- per month. This finding of the appellate court was not challenged before me. The finding of the appellate court fixing standard rent at the rate of Rs. 45/- per month is based on proper appreciation of evidence on record. Cogent reasons have been given why the initial rent of Rs. 41/- per month could not be enhanced beyond Rs. 45/- per month despite the landlord making expenditure on repairs etc. of the room. The agreed rent of Rs. 51/per month in the view of the appellate court could not be the standard rent and the standard rent was fixed at Rs. 45/- per month.

11. If the standard rent fixed by the trial court was reduced to Rs. 45/- per month certain questions arise for consideration consequent upon this finding of the lower appellate court.

12. The first point for consideration in this regard would be whether this finding of the lower appellate court will be prospective in operation or retrospective in operation. Normally the judgement operates from the date when it is pronounced but the finding on the standard rent given by the appellate court will have retrospective effect and not prospective. The finding of the Trial Court regarding standard rent will therefore be deemed to have been modified and the standard rent will relate back to 1.7.1974, namely, the date from which arrears of rent were claimed by the landlord. If this is so then it cannot be said that the tenant committed default in making the deposit of rent or that he defaulted in depositing full amount of rent due to the landlord. It was argued by the learned counsel for the respondent that 4.2.1978 was the date of issues and upto this date Rs. 2193/- were to be deposited at the rate of Rs. 51/- per month as against which Rs. 2000/- only were deposited by the tenant and as such there was shortage of Rs. 193/- on the date of settlement of issues and as such the revisionist is not entitled to the protection of Section 12(3)(b) of the Act. This contention is also misconceived. If the standard rent

fixed by the appellate court at Rs. 45/- per month is to operate retrospectively then reduction in the standard rent at the rate of Rs. 6/- per month will cover the shortage of Rs. 193/- on the date of issue. Thus the revisionist cannot be said to have faulted in depositing the entire arrears of rent at the rate of Rs. 45/- per month on 4.2.1978, namely, the date of settlement of issues.

13. If the Trial Court fixed interim standard rent at the rate of Rs. 51/- per month on 9.9.1977 it cannot be said that because there was some shortage in the deposit of rent at interim rate, the tenant committed default in payment of rent. The apex court in Vora Abbasbhai Vs. Haji Gulamnabi, 1964 G.L.R. 85 has laid down that under Section 11(3) of the Act the court merely specifies the amount of rent payable pending the determination of standard rent. The court thereby does not fix standard rent within the meaning of Section 5(10A)(iv) of the Act. The power to fix the standard rent of the premises is exercisable under Section 11(1) alone. It further laid down where there is dispute as to standard rent, the tenant would not be in a position to pay or tender the standard rent, on the first day of hearing and fixing of another date by the court for payment or tender would be ineffectual, until the standard rent is fixed. The court would in such a case on the application of the tenant, take up the dispute as to standard rent in the first instance and having fixed standard rent, call upon the tenant to pay or tender such standard rent so fixed on or before a date fixed. If the tenant pays the standard rent fixed on or before the date specified, and continues to pay or tender it regularly till the suit is finally decided, he qualifies for the protection of clause (3)(b). It further laid down that if in appeal filed against the decree, the standard rent is enhanced, the appellate court may fix a date for payment of the difference, and if on or before that date the difference is paid, the requirement of Section 12(3)(b) would be complied with.

14. From the last portion of the observation of the apex court extracted above it is clear that if the appellate court enhances the standard rent it has to grant time to the tenant to pay difference within time fixed by it and if the difference is deposited by the tenant within the time fixed by the appellate court, he becomes entitled to the protection under Section 12(3)(b) of the Act. Likewise if the appellate court reduced the amount of standard rent fixed by the trial court then it can safely be held that the tenant would be entitled to

claim adjustment of the extra amount deposited in compliance of the orders of the Trial Court asking him to deposit more rent as standard rent.

15. The apex court further laid down in Vora Abbasbhai Vs. Haji Gulamnabi's case (supra) that Section 12(3)(b) of the Act requires the tenant to pay standard rent and not interim rent and for the purposes of that clause the expression `standard rent' may not be equated with `interim rent' specified under Section 11(3). It was further held that it is no ground for equating that interim rent which may be specified under sub-section (3) of Section 11 is standard rent fixed under sub-section (1) of Section 11.

16. In view of the aforesaid decision and the finding of the lower appellate court that the standard rent should be at Rs. 45/- per month, the failure of the tenant to make strict compliance of depositing interim standard rent in compliance of the directions of the Trial Court will not render him liable for eviction rather he is entitled to statutory protection under Section 12(3)(b).

17. It may also be mentioned that since the standard rent was finally determined by the trial court in its judgement dated 13.7.1979 and not before that, the revisionist could not have deposited the standard rent on the date of issues namely on 4.2.1978 nor he was obliged to deposit at the rate of Rs. 51/- per month on that date. Since no date was given by the trial court to the tenant to make good the deficiency after rendering its judgement, the tenant could not be evicted on this ground also.

18. For the reasons given above, the revision is bound to succeed.

19. The revision is accordingly allowed. The judgement and decree of the lower appellate court in so far as it maintains the decree for possession against the revisionist is hereby set aside. The remaining portion of the decree for mesne profit etc. is maintained in the shape of decree for arrears of rent. In the circumstances of the case, parties shall bear their own cost of this revision.

00000

10.